

SENATE BILL NO. 408

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time February 19, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0651S.021

AN ACT

To repeal section 570.120, RSMo, and to enact in lieu thereof one new section relating to prosecuting the crime of passing bad checks, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 570.120, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 570.120, to read as follows:

570.120. 1. A person commits the crime of passing a bad check when:

2 (1) With purpose to defraud, the person makes, issues or passes a check
3 or other similar sight order or any other form of presentment involving the
4 transmission of account information for the payment of money, knowing that it
5 will not be paid by the drawee, or that there is no such drawee; or

6 (2) The person makes, issues, or passes a check or other similar sight
7 order or any other form of presentment involving the transmission of account
8 information for the payment of money, knowing that there are insufficient funds
9 in or on deposit with that account for the payment of such check, sight order, or
10 other form of presentment involving the transmission of account information in
11 full and all other checks, sight orders, or other forms of presentment involving the
12 transmission of account information upon such funds then outstanding, or that
13 there is no such account or no drawee and fails to pay the check or sight order or
14 other form of presentment involving the transmission of account information
15 within ten days after receiving actual notice in writing that it has not been paid
16 because of insufficient funds or credit with the drawee or because there is no such
17 drawee.

18 2. As used in subdivision (2) of subsection 1 of this section, "actual notice
19 in writing" means notice of the nonpayment which is actually received by the
20 defendant. Such notice may include the service of summons or warrant upon the
21 defendant for the initiation of the prosecution of the check or checks which are
22 the subject matter of the prosecution if the summons or warrant contains

23 information of the ten-day period during which the instrument may be paid and
24 that payment of the instrument within such ten-day period will result in
25 dismissal of the charges. The requirement of notice shall also be satisfied for
26 written communications which are tendered to the defendant and which the
27 defendant refuses to accept.

28 3. The face amounts of any bad checks passed pursuant to one course of
29 conduct within any ten-day period may be aggregated in determining the grade
30 of the offense.

31 4. Passing bad checks is a class A misdemeanor, unless:

32 (1) The face amount of the check or sight order or the aggregated amounts
33 is five hundred dollars or more; or

34 (2) The issuer had no account with the drawee or if there was no such
35 drawee at the time the check or order was issued, in which cases passing bad
36 checks is a class C felony.

37 5. (1) In addition to all other costs and fees allowed by law, each
38 prosecuting attorney or circuit attorney who takes any action pursuant to the
39 provisions of this section shall collect from the issuer in such action an
40 administrative handling cost. The cost shall be twenty-five dollars for checks of
41 less than one hundred dollars, and fifty dollars for checks of one hundred dollars
42 but less than two hundred fifty dollars. For checks of two hundred fifty dollars
43 or more an additional fee of ten percent of the face amount shall be assessed, with
44 a maximum fee for administrative handling costs not to exceed seventy-five
45 dollars total. Notwithstanding the provisions of sections 50.525 to 50.745, RSMo,
46 the costs provided for in this subsection shall be deposited by the county
47 treasurer into a separate interest-bearing fund to be expended by the prosecuting
48 attorney or circuit attorney. The funds shall be expended, upon warrants issued
49 by the prosecuting attorney or circuit attorney directing the treasurer to issue
50 checks thereon, only for purposes related to that previously authorized in this
51 section. Any revenues that are not required for the purposes of this section may
52 be placed in the general revenue fund of the county or city not within a
53 county. Notwithstanding any law to the contrary, in addition to the
54 administrative handling cost, the prosecuting attorney or circuit attorney shall
55 collect an additional cost of five dollars per check for deposit to the Missouri office
56 of prosecution services fund established in subsection 2 of section 56.765, RSMo.
57 All moneys collected pursuant to this section which are payable to the Missouri
58 office of prosecution services fund shall be transmitted at least monthly by the

59 county treasurer to the director of revenue who shall deposit the amount collected
60 pursuant to the credit of the Missouri office of prosecution services fund under
61 the procedure established pursuant to subsection 2 of section 56.765, RSMo.

62 (2) The moneys deposited in the fund may be used by the prosecuting or
63 circuit attorney for office supplies, postage, books, training, office equipment,
64 capital outlay, expenses of trial and witness preparation, additional employees
65 for the staff of the prosecuting or circuit attorney, employees' salaries, and for
66 other lawful expenses incurred by the circuit or prosecuting attorney in operation
67 of that office.

68 (3) This fund may be audited by the state auditor's office or the
69 appropriate auditing agency.

70 (4) If the moneys collected and deposited into this fund are not totally
71 expended annually, then the unexpended balance shall remain in said fund and
72 the balance shall be kept in said fund to accumulate from year to year.

73 6. Notwithstanding any other provision of law to the contrary:

74 (1) In addition to the administrative handling costs provided for in
75 subsection 5 of this section, the prosecuting attorney or circuit attorney may
76 collect from the issuer, in addition to the face amount of the check, a reasonable
77 service charge, which along with the face amount of the check, shall be turned
78 over to the party to whom the bad check was issued;

79 (2) If a check that is dishonored or returned unpaid by a financial
80 institution is not referred to the prosecuting attorney or circuit attorney for any
81 action pursuant to the provisions of this section, the party to whom the check was
82 issued, or his or her agent or assignee, or a holder, may collect from the issuer,
83 in addition to the face amount of the check, a reasonable service charge, not to
84 exceed twenty-five dollars, plus an amount equal to the actual charge by the
85 depository institution for the return of each unpaid or dishonored instrument.

86 7. When any financial institution returns a dishonored check to the person
87 who deposited such check, it shall be in substantially the same physical condition
88 as when deposited, or in such condition as to provide the person who deposited
89 the check the information required to identify the person who wrote the check.

90 **8. The attorney general shall have concurrent jurisdiction with**
91 **any and all prosecuting attorneys to prosecute persons in violation of**
92 **this section when the face amount of the bad check is equal to or**
93 **greater than one thousand dollars.**

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